

## **ENFORCEMENT STRATEGIES**

### **H.1. Facilities**

Over the last eight years, the Department's solid waste enforcement element has shifted a significant percentage of its routine inspection resources from solid waste facilities (landfills, transfer stations and incinerators) to recycling centers (Class B's, C's and D's). This was done for the following reasons:

- to keep pace with the increasing numbers of recycling centers being approved to engage in the processing of recyclable materials\*;
- to accommodate the formal promulgation of recycling center rules and operating standards issued in 1995;
- to address deficient compliance rates determined to exist at a number of these centers (with the exception of the Class D centers); and
- to accommodate the deregulation of waste oil from a hazardous waste to a Class D recyclable.

Appendix table H-1 identifies solid waste facility/recycling center compliance rates from 1995 through 2001. A review of this data determines that the State's thermal destruction facilities (incinerators) and landfills are, by and large, well run and have good compliance ratings. The solid waste transfer stations and recycling centers, both of which comprise the majority in the industry, are not faring as well. However, experience has shown that dissection of the low compliance rates finds the majority of the facilities/centers are operating well while a lesser number have significant problems. Nonetheless, these low compliance ratings require attention.

With regard to the recycling centers, the Department will continue its increased presence at these centers. In addition, the Department is considering using its CEHA (County Environmental Health Act) partners to conduct additional recycling center inspections (a more in-depth discussion of CEHA activities follows later in this report). It is also anticipated that operational regulations for these centers recently revised and effective November 2002 will help reduce instances of violation.

As for the solid waste transfer stations, the Department is considering increasing inspection frequency and reallocating resources from the high compliant facilities to less compliant facilities.

Recently, the Department has noticed a tendency for certain facilities to be less vigilant with regards to accepting waste from unregistered/improperly registered haulers and accepting overweight vehicles. For these facilities, the Department will set up special inspection details to address these issues.

\*It should be noted that while overall recycling rates are down from a few years ago, the number of facilities engaged in recycling activities is at an all time high (currently exceeding 275 facilities), compared to just 79 facilities for solid waste.

The Department has also become aware that, in general, it appears increasing percentages of recyclable materials are making their way into the solid waste stream for disposal rather than being recycled. While this is a difficult issue to determine for certain, the Department will increase its vigilance at the disposal facilities, undertake additional investigation of hauling practices and review disposal policies at Class A recycling facilities which handle traditional recyclables (bottles, cans and paper).

Lastly, enforcement staff will be developing comprehensive inspection procedures to address universal waste requirements at Class D recycling centers and also household hazardous waste storage requirements at many local county and municipal storage yards as these practices become more prevalent throughout the State.

## **H.2. Transporters/Haulers**

At the same time that the number of recycling facilities increased so did the number of solid waste transporters, both commercial and non-commercial. Commercial transporters collect and transport solid waste for profit. Non-Commercial transporters can haul only their own self-generated waste (e.g. construction/ demolition contractor). The increase in the number of transporters is due in part to the partial deregulation (especially with regards to rate regulation) of the Solid Waste Utility Control Act brought about by the Solid Waste Regulatory Reform Act (enabling regulations enacted in 1996) and also the reduced timeframes for A-901 review and approval. As a result of these two increases though, enforcement resources have become stressed and our ability to monitor the transportation segment of the industry is somewhat lacking. This has become evident not only by the 77% compliance rating for 'General Transporter Inspections' noted in the lower portion of Figure A. above, but also by the recent proliferation of complaints regarding self-generators (non-commercial haulers) who are acting in a commercial capacity and undercutting the legitimate commercial transporters.

To address some of these issues, DEP vehicle registration staff and enforcement staff have developed a protocol to refer questionable vehicle registration applications to enforcement staff to conduct additional investigations to ensure the legitimacy of the application. The Department also recently revised certain mandates required of the CEHA agencies requesting that these agencies increase their vigilance of the non-commercial transporter universe. In addition, the Department has dedicated an investigator to perform transporter investigations full time.

One of our more useful strategies in monitoring the transporter industry has been the imposition of roadside vehicle inspections conducted throughout the State and in particular, our participation in TRASHNET for the last four years.

Roadside inspection checks, done in conjunction with the NJ State Police and also vehicle checks set up at solid and hazardous waste facilities make a strong visual impact on the haulers and also on the general public. As a consequence of the 9/11 attacks, these inspection details were curtailed in 2001 due to the unavailability of the State Police road

troopers for obvious reasons. We expect to resume normal scheduling barring any unforeseen circumstances.

TRASHNET is a multi-state, weeklong vehicle inspection event during which the Department and the NJ State Police will stop upwards of 200 vehicles at various locations throughout the State and perform an in- depth safety and credentials check. Other participating States include Delaware, Maryland, New York, Ohio, Virginia, West Virginia, Commonwealth of Pennsylvania and the District of Columbia. The TRASHNET concept originated as a result of negative publicity the above States, including New Jersey, which were experiencing accidents involving trucks transporting waste and the implied lack of safety inspections. In addition it has become obvious to anyone who drives that the number of waste transfer trailers traveling the roads has increased. The TRASHNET events are usually scheduled twice a year, however it was cancelled in the fall of 2001 and the spring of 2002 again due to the 9/11 attacks. Normal scheduling has resumed. While TRASHNET has historically been particular to solid waste, the Department expanded this event in New Jersey this year (2002) to include inspections of vehicles hauling hazardous waste and in certain locations performed vehicle diesel emissions tests. Appendix table H-2 identifies NJ's inspection results since its participation in this event.

#### Regulated Medical Waste

In June of 1995, the DEP's Bureau of Compliance and Enforcement performed an in-depth compliance analysis of the State's Regulated Medical Waste Program spanning in time from its inception in 1988 to early 1995. The resultant report is attached at the end of this section. In broad strokes, this report was favorable and identified a consistent increase in compliance rates in all sectors of the industry including generators, transporters and facilities. In addition, the number of incidents involving RMW (abandoned waste, beach wash-ups, etc.) was also in decline.

Since that time the Program has undergone a significant change in that the vast majority of the enforcement responsibilities have been transferred to the Department of Health and Senior Services (DOHSS) including the inspection and monitoring of the largest segment of the industry, the generator segment, comprised of 18,000(+) entities. Through a Memorandum of Agreement signed in January of 1997 between DEP and DOHSS, DOHSS assumed jurisdiction of all inspections of generators, non-commercial collection facilities and destination facilities (excepting incinerators). In addition, DOHSS assumed responsibility for emergency incident response involving reports of illegal disposal and abandonment, transportation accidents, wash-ups of medical waste and reports of citizen exposure.

DEP retained jurisdiction over all inspections of commercial and limited transporters, commercial collection facilities, incinerators disposing of regulated medical waste and certain incident responses at solid waste transfer stations and landfills.

With regard to the RMW transporters, commercial collection facilities and incinerator/destination facility segments of the regulated medical waste industry, Appendix table H-3 identifies the compliance rates from 1997 through 2001. These compliance ratings continue the upward trend initially identified in the 1995 report and in fact, are at an all time high with the facilities having a 100% compliance rate 4 years running and the transporters having a 100% rate 2 years running. A review of the 18 transporter violations issued during 1997 - 1999 determine only one violation to be significant/serious.

While these rates are prominent, it must be noted that the transporter, commercial collection and incinerator facility universe is very small (around 40 total) in comparison to RMW generators numbering 18,000(+).

Analysis of RMW complaints and incidences determines a substantial drop over the last 6 years. As noted in Appendix table H-4, from 1992 to 1996, the Department received 362 complaints/reports involving regulated medical waste. From 1997 to 2002 the number dropped to 49 to the point where RMW incidents now account for only 1.4 % of the total volume of all solid waste complaints/incidents.

#### Regulated Medical Waste Issues

With regard to RMW transporters, while the inspection compliance rates are noteworthy, the Department has noticed a decline in the number of commercial entities engaged in the transportation segment of the business. In 1995 there were twenty-five or so commercial transporters. At present there are thirteen, five of which are subsidiaries of the same company. While the diminished number of transporters makes compliance monitoring easier, the Department is obligated as per the Solid Waste Utility Control Act to ensure disposal services are readily available to customers and that there is effective competition. Thus far aside from a few complaints by certain transporters, the Department finds no evidence to conclude there are any disposal availability problems nor that the industry is non-competitive. However this aspect will continue to be monitored.

#### **H.4. Solid Waste Utility Control**

As previously noted in the Transporters/Haulers section, the partial deregulation of the Solid Waste Utility Control Act through the Solid Waste Regulatory Reform Act helped increase the number of transporters throughout the State. This, in turn, had the effect of increasing competition among haulers, and thus making available additional companies from which customers could select service (a primary goal of the enabling legislation). The Reform Act regulations also carried an added benefit in that, by simplifying rate regulation, additional program resources were now available to focus on customer service items. One such item was the development of the 'Customer Bill of Rights' which plainly identified a customer's rights and service expectations in addition to identifying customers' responsibilities to the hauler.

Continuing in that vein, in November of 2002, the Department readopted the Customer Bill of Rights and put forth additional provisions as follows:

- 1) Make the collector responsible for assisting the customer in the selection of the most favorable service to meet the customers needs at reasonable rates;
- 2) Provide that in the event of inclement weather or when operation of a solid waste vehicle would pose a threat to the safety of the public and/or the equipment and personnel of the collection company, that pick up shall be made no later than the next regularly scheduled day or as soon as weather permits where pick up is made on a once per week basis;
- 3) Require the collector to transmit copies of any notice of discontinuance of service to the Department at the same time it is transmitted to the customer;
- 4) Prohibit solid waste service contracts or agreements from including any clause which calls for an automatic renewal of the contract or agreement; and
- 5) Require solid waste collection utilities to display their name as it appears on their CPCN along with their AA trading as @ name, if applicable, on all vehicles and containers.

As the Department is statutorily charged with safeguarding the interests of consumers with respect to solid waste collection and disposal, these new requirements should go far in educating customers about their solid waste disposal options and services and ensuring that they receive fair service at reasonable rates. Additionally, the requirement to have the name of the collector on all vehicles and containers, will assist customers in reporting problems with collectors.

In addition to increasing customer protections, the Department has also sought to quicken enforcement of these protections and other requirements and make the penalty assessment process more predictable. Previously, while the Act identified maximum penalty limits it did not provide any routine assessment guidelines. To address this deficiency, the Department in November of 2002 codified the following penalty assessment procedures:

The Department adopted formal procedures for the assessment and payment of penalties. In order to assess a penalty under the Control Act, and the Reform Act, and any rule which implements these statutes, the Department shall, by means of a penalty assessment, notify the violator by certified mail or by personal service. This notice of penalty assessment shall identify the section of the Act, rule, administrative order, etc. which was violated; concisely state the facts constituting the violation; specify the amount of the penalty to be imposed; and advise the violator of the right to request a hearing.

The Department created minimum or base penalties for some violations. By creating minimum or base penalties for violations, all violators of the same regulatory provision are treated equally, eliminating any competitive advantages and/or disadvantages. In fixing the base penalties, the Department assumed the optimal or least aggravating circumstances for each of the statutory criteria; that the violator has been fully cooperative and has promptly implemented all appropriate mitigation or prevention

measures; and has an otherwise satisfactory compliance or operating history. As to the monetary amount for each violation, each base penalty reflects the Department's expertise in administering the solid waste utility program and the potential impact of each violation. Additionally, the base penalties are set at an amount determined to be minimally necessary to help deter future violations. In this regard, the base penalties assume that the violation was neither intentional nor even negligent, except as may otherwise be implicit in the particular infraction.

The Department has implemented a penalty matrix assessment system to be used when the violator has not been fully cooperative nor has promptly implemented all appropriate mitigation or prevention measures, and/or the violator has an unsatisfactory compliance or operating history. In such cases, the base penalty would be insufficient to provide an effective deterrent because the penalty amount assessed would be too low. The penalty matrix assigns a specific penalty amount for each violation depending upon both the seriousness of the violation and the conduct of the violator. The violation levels are based upon the potential effects of each type. Major violations are those which tend to cause a serious risk to the health, safety and welfare of the people of this State and the economic viability and competitiveness of the solid waste collection industry. Moderate violations would or could potentially result in a substantial risk to health, safety and welfare or to economic viability and competitiveness. Minor violations are those which are not included in either of the above categories or which are procedural in nature. Major conduct includes any deliberate or willful act. Moderate conduct includes those cases in which there is no evidence that the violation was intentional, but such may be inferred from the circumstances that the violator knew or should have known that the act or omission is a violation of the regulations. Minor conduct includes any violation that may not properly be included in the above two categories. Matrix penalties issued by the Department may be adjusted based on the following factors: 1) the compliance history of the violator; 2) the nature, timing and effectiveness of any measures taken by the violator to minimize the effects of the violation; 3) the nature, timing, and effectiveness of any measures taken by the violator to prevent future similar violations; 4) any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or 5) other specific circumstances of the violator or violation.

The Department also established specific penalties for submitting inaccurate or false information and for failure to allow lawful entry and inspection. These penalty amounts range from \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and subsequent offenses.

Last, the Department codified statutory penalties for transporting food in vehicles which also transport solid waste. With few exceptions, this section provides that no vehicle (including any truck, trailer or other haulage vehicle other than a truck tractor) utilized for the transportation of solid waste in New Jersey shall be subsequently utilized for the transportation of fresh food or fresh food products, including meat, poultry, produce or other non-processed fresh food products intended for sale for human consumption unless sanitized in accordance with rules and regulations adopted by the Department.

## **H.5. County Environmental Health Act (CEHA)**

The CEHA statute (N.J.S.A. 26:3A2-33) authorizes the Commissioner to delegate authority for the implementation of any program and enforcement of specified environmental health to certified local health agencies and provide funding for these activities. In addition, certified local health agencies, which have operating landfills in their respective counties, are authorized to collect a percentage of the tipping fee to help provide funding for compliance monitoring of the county's solid waste program. Lastly, all local boards of health, whether they are certified CEHA agents or not, are authorized to enforce the Solid Waste Management Act in addition to State and local health codes. Currently, nineteen (19) counties have CEHA programs that perform solid waste work (except Mercer and Morris Counties).

The CEHA agencies provide additional valuable services to the Department's solid waste program by aiding in the response to complaints and conducting facility inspections. The Department, through the CEHA grant process coordinated by the Office of Local Environmental Management (OLEM), identifies the priority activities and inspections it requires these agencies to perform (see Appendix chart H-5) and establishes performance criteria.

### **CEHA - Solid Waste Priority Activities**

- ? Monitor transporters hauling solid waste to ensure compliance with NJDEP regulations and, at the discretion of the local agency, the County's Solid Waste Management Plan.
- ? Investigate all solid waste complaints received from citizens and NJDEP, such as illegal dumping of solid waste materials, unregistered haulers, and unpermitted facilities. Respond back to NJDEP within ten (10) days of receipt with the initial or final outcome of complaint as the case may warrant.
- ? Conduct an annual routine compliance monitoring inspection of Class A recycling centers, General Class B recycling centers, Class C compost facilities, transfer/MRF stations, resource recovery facilities, operating landfills (except as noted below), and intermodal facilities. It is recommended that the annual inspections are conducted with an inspector from the NJDEP's Office of Solid Waste Compliance and Enforcement, provided a mutually agreed upon date can be arranged.
- ? Note: All five counties (Burlington, Cumberland, Gloucester, Middlesex, and Ocean) who are collecting solid waste enforcement fees at operating sanitary landfills, pursuant to N.J.A.C. 7:26-4.5, are to conduct a minimum of two compliance monitoring inspections per month of operating landfills within their counties.

- ? Conduct semi-annual routine compliance monitoring inspections of exempt compost facilities. Concentrate on conducting the first inspection in late Spring and the second inspection in late Fall.
- ? Conduct inspections as needed of exempt and limited Class B facilities, when notification of activity at these sites is received from the NJDEP's Bureau of Recycling and Planning or Bureau of Landfill and recycling Management as appropriate.
- ? Conduct compliance assistance visits at municipal Department of Public Works (DPW) facilities. Upon identification of any violations, closely monitor whether compliance is achieved within the allowable time period. If enforcement is required, immediately refer to the NJDEP's Office of Local Environmental Management.
- ? Conduct an annual routine compliance monitoring inspection during the operation of farmland mulch sites.
- ? Continue to update the list of all known convenience centers and farmland mulch sites and Class A recycling centers and provide this list to NJDEP, Office of Local Environmental Management by December 31, 2002.
- ? Conduct inspections as needed to ensure contaminated soil is handled as per NJDEP guidelines.
- ? Enforce the State Solid Waste Management Act as required by NJDEP, initiate enforcement proceedings in a court of competent jurisdiction against violators as appropriate. NJDEP shall be notified five (5) days prior to the convening of all settlement conferences and/or court actions. The notification shall include the proposed settlement amount or the penalty amount to be sought in the court action. In addition, follow-up reports on the outcome of all settlement conferences and court actions, including the penalty assessment and compliance plan (if applicable), shall be forwarded to NJDEP's Solid Waste Compliance and Enforcement Program.
- ? On a spreadsheet developed by the NJDEP, electronically submit a quarterly report to NJDEP's Office of Local Environmental Management indicating the solid waste facility inspected, date of inspection, name of inspector, compliance status, and whether an NOV was issued to the facility.
- ? Compile and maintain files and records to support NJDEP and county enforcement actions.

While the CEHA program is an excellent resource, historically the Bureau of Solid Waste Compliance and Enforcement has experienced difficulty in the oversight of these activities due to a lack of staff at the Bureau level to perform audits of each individual



CEHA program to ascertain methodologies and consistencies and advise of policy and/or regulation changes. Additionally, the inability to compile real time electronic data on inspections conducted, violations issued and compliance information and then incorporate this data into the Department's NJEMS data system for analysis and reporting purposes further adds to this difficulty.

One area in particular that requires increased oversight and clarification involves waste flow enforcement. Some counties like Union and Hudson are putting almost all their emphasis on this issue, while many others are not. There is inconsistency among the counties regarding this activity.

To further expand on the issue of inconsistency, each county is required to implement its County Solid Waste Management Plan, which is approved by the Department. Some counties strictly enforce transporter routes, while others do not. Certain counties collect compensatory damages from transporters bypassing the county plan requirements while others collect both compensatory damages and penalties to deter repeat violations. In addition, counties with operating landfills may not be vigilant in keeping recyclables out of the waste stream, since they seek to maintain or increase the volume of solid waste coming to the facility.

Further, as noted previously, all local boards of health, whether they are certified CEHA agents or not, are authorized to enforce the Solid Waste Management Act, however, the Department has not been able to explore and/or develop a distinct role for these local programs nor, for that matter, the 2 counties (Mercer and Morris) that are not CEHA certified, which lack authority to enforce the Solid Waste Management Act, but appear to have some degree of an active enforcement program. Since the Department lacks resources to oversee these local programs, there is the concern that inconsistent enforcement is occurring.

Recent efforts to address some of these issues include the realignment of the Office of Local Environmental Management under the Director of Waste Enforcement Programs, the establishment of a single point of contact for all CEHA issues within the Bureau of Solid Waste Compliance and Enforcement and the ability of the CEHA programs to view Department enforcement data through the NJEMS/OPRA (Open Public Records Act) web portal. The issues of performing program audits and incorporating CEHA data into NJEMS remain unresolved at this time.

## **H.6. Compliance Assistance/Education/Outreach Initiatives**

With the simple premise that it is oftentimes easier to address an issue up-front rather than wrestle with it after it becomes a problem, the Department has initiated several compliance assistance/educational/ outreach strategies to proactively promote compliance in certain areas. These initiatives include the Greenstart program, the Public Works (DPW)/Maintenance yard initiative and One-Stop .

The Greenstart Compliance Assistance Program was created by the Department to provide on-site assistance to help small businesses and municipalities understand their environmental obligations, through multi-media site inspections and review of applicable environmental regulations. The Office of Local Environmental Management (OLEM) oversees the program and utilizes Department compliance and enforcement inspectors to conduct the on-site visits. The Department believes that future environmental gains are to be made through joint problem solving by the State and those segments of the regulated community most in need of assistance. Through this program, The Department seeks to build a trust that will encourage businesses and governments to proactively address potential problems and cooperatively improve compliance. Penalties will be waived by the Department if the violation is corrected within a period of time not to exceed 6 months, or up to one year if the entity is correcting the violation through the implementation of pollution prevention measures. This policy shall not apply for violations: (a) of a criminal nature; (b) that cannot be remedied immediately and are causing significant environmental or human harm; (c) which require mandatory penalties pursuant to the Clean Water Enforcement Act; (d) that are repeat offenses; or (e) required to be reported to the Department, such as information in Discharge Monitoring Reports.

In 2002, 24 requests were made to OLEM for greenstart inspections, resulting in 14 site visits to date.

As part of the Greenstart program but specifically focusing on the maintenance yards operated by the various county and municipal Department's of Public Works, NJ Department of Transportation, NJ Turnpike, Garden State Pkwy, Atlantic City Expressway, State Parks and other similar entities, the Department and its CEHA agencies conduct inspections of these yards, identify areas of regulatory concern and again allow for corrective action measures without punitive action, should violations be determined and quickly corrected.

Since 2001, the Department's Bureau of Solid Waste Compliance and Enforcement has conducted one hundred and one (101) multi-media inspections at state public work yards to enhance compliance at these facilities. Two hundred (200) compliance assistance visits have been conducted at municipal department of public works (DPW) yards, using county health department inspectors under the County Environmental Health Act (CEHA) program.

A similar 2-year compliance assistance pilot program, funded by the Federal EPA, is underway at marinas. On-site visits will be conducted by CEHA county inspectors at 115 marinas.

One-Stop is a combined permitting and compliance initiative designed to simplify the permitting process for new facilities and promote greater environmental compliance and stability for both old and new facilities through coordinated inspections, cross-media awareness, and facilitated compliance assistance.

One-Stop compliance assistance is focused on small- to medium-sized facilities with activities that are regulated across several media (e.g., air, water, hazardous waste), but do not have an environmental coordinator. Permitting services are offered to new major facilities, construction, and development projects that are complex in the number, variety, and timing of the permits they require.

Through the compliance division, the department selects facilities that will receive an environmental overview (EO) document summarizing all applicable requirements for compliance monitoring, record keeping, and reporting. The EO document also lists all compliance program contacts. The Department will then conduct an environmental overview site visit to: validate the accuracy of the EO requirements; provide compliance assistance to the facility; prevent or correct compliance violations; and assist the facility in identifying any additional pollution prevention, technology transfer, or source reduction measures that could save costs and improve the efficiency of the facility. Since this visit is not an inspection, and in fact is in addition to routine inspections, violations found during the site visit are not subject to traditional enforcement action unless they are of a criminal nature, causing significant environmental or human harm, subject to mandatory penalties by state law, or repeat offenses.

One-Stop's permitting service provides general information about the State's environmental regulations and permit applicability, and serves as a single source of information for facilities on all permits required for a development or significant remediation project. One-Stop staff will work with a facility to identify permit application and issuance schedules that are conducive to its project implementation schedule. One-Stop also provides the opportunity for cost savings, both by saving time through a streamlined permitting process and by helping facilities incorporate cost saving pollution prevention measures into their original plans.

#### **H.7. Multimedia Efforts/NJEMS/Task Forces:**

Over the last few years, the Department's enforcement programs (air, water, land use, solid waste and hazardous waste) have emphasized joint inspections in an effort to help familiarize inspectors with the key regulatory components of each media. The goal is to develop well-rounded inspection staff able to identify potential major violations in any media. Additionally, all enforcement staff are currently utilizing 'NJEMS' (New Jersey Environmental Management System) which is a centralized data management and reporting system allowing staff to view all activities undertaken by any program at a given site. Relative to solid waste enforcement, the multimedia efforts provide additional 'eyes' to help identify compliance issues while the NJEMS system provides the necessary tools for more coordinated, comprehensive and effective enforcement actions.

Different areas of the Department have also joined forces to create the Watershed Task Force and the Waterways Enforcement Team.

The Watershed Task Force will identify a specific watershed out of the twenty statewide and coordinate comprehensive inspections by all media (air, water, land use, pesticides,

solid waste and hazardous waste) of all facilities, sites, businesses, and manufacturers which could have an impact on the selected watershed.

The Waterways Enforcement Team, made up of water, land use and waste inspectors will respond to complaints from riverkeepers and baykeepers as well as do periodic boat surveillance along the State's waterways. Also, they would plan and execute about three waterway strikes a year in various parts of the state.

While these task forces do not specifically target solid waste compliance issues, they will invariably uncover sites illegally storing waste and other similar type violations while providing the opportunity for this program to inspect entities such as scrap processing facilities and junkyards where we have historically had little presence.